



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,170	07/01/2003	Vahid C. Saadat	USGI-004 A	5203
20350	7590	03/29/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			MENDOZA, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3734	

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,170

Applicant(s)

SAADAT ET AL.

Examiner

Michael G. Mendoza

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 15,17,19,22-25,28 and 30-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9,11-14,16,18,20,21,26,27 and 29 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 13 January 2006 have been fully considered but they are not persuasive. The applicant argues that Ewers et al. cannot be ejected from a delivery device. The examiner disagrees. The applicant has not positively claim a delivery device. The limitation of "adapted to be ejected from a delivery device" is a functional limitation and does not result in a structural difference. The device of Ewers et al. need only be capable of being ejected from a delivery device. Ewers et al. is fully capable of being ejected from a delivery device
2. The applicant argues that the device of Ewers et al. is not configured so that application of tension on the suture approximates the distal bushing to the proximal bushing. The device of Ewers et al. needs only to be capable of performing the claimed limitation. The device of Ewers et al. is fully capable of performing the recited limitation. An example of how the device of Ewers et al. can perform the recited function is by starting with the configuration as shown in FIG. 5. By grasping and holding proximal bushing 27 in place at a distal position as shown in FIG. 5 then pulling the suture 34 in the proximal direction would cause distal bushing 30 to move proximally towards the distal bushing. The device of Ewers et al. reads on the claim limitation.
3. The applicant argues that the device of Ewers et al. does not teach struts. The examiner disagrees. As shown in FIG. 6, Ewers shows struts 40 as described in col. 9, line 2-5.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-9, 11, 16, 18, 20, 21, 26, 27, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Ewers et al. 6589208.

6. 1-9, and 11, Ewers et al. teaches an anchor comprising: a sleeve 32 including proximal 27 and distal bushings 30; wherein the sleeve is adapted to be reconfigured from a reduced delivery profile to an expanded deployed profile (fig. 3 & 4); a suture 34 coupled to the distal bushing and extending through the interior of the sleeve; wherein the suture extends through an aperture in the proximal bushing (see figs.); wherein the sleeve is configured so that application of tension on the suture approximates the distal bushing to the proximal bushing (col. 7, lines 55-67); wherein the sleeve is configured so that application of tension on the suture transitions the sleeve from the reduced delivery profile to the expanded deployed profile (col. 7, lines 55-67); wherein the sleeve is braided (see figs.); wherein the sleeve is formed of individual monofilament elements; wherein the monofilament elements are made of polyester, nylon, TEFLON, polypropylene or combinations of these materials (col. 6, lines 39-41); wherein the

Art Unit: 3731

sleeve comprises a shape memory material; an internal lock for retaining the sleeve in the expanded deployed profile (col. 3, lines 32-51).

7. As to claims 16, 18, 20, 21, 26, 27, and 29, Ewers et al. teaches an anchor comprising: a shank having proximal and distal ends; and a reconfigurable member disposed on the distal end of the shank, the reconfigurable member having a reduced delivery profile and an expanded deployed profile; wherein the reconfigurable member comprises a plurality of struts affixed to the distal end of the shank/fixation point, a suture coupled to the fixation point; the plurality of struts having a reduced delivery profile wherein the plurality of struts are substantially parallel to the shank and an expanded deployed profile wherein the plurality of struts extend at angles away from the shank; wherein the shank is arranged so that tension applied to the shank urges the reconfigurable member to the expanded deployed profile; wherein the reconfigurable member comprises a shape memory material; wherein the fixation point comprises a distal bushing and distal end of each one of the plurality of struts is coupled to the distal bushing and the proximal end of each one of the plurality of struts is coupled to a proximal bushing; and wherein in the expanded deployed profile, the plurality of struts bow radially outward to form a disk-like configuration (fig. 6).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ewers et al. in view of Gannoe et al. 6746460.
10. Ewers et al. teaches the anchor of claim 1. It should be noted that Ewers et al. fails to teach a coating of bioactive agent applied to an outer surface of the sleeve. However, Gannoe et al. teaches a device used for gastric reduction having a bioactive agent coating. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply a bioactive coating to the device of Ewers et al. to promote healing or protect against infection (col. 5, lines 9-11).

Allowable Subject Matter

11. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3731

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contacts

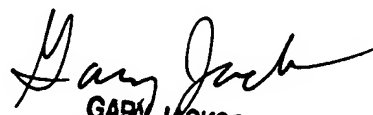
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MM

MM


GARY JACKSON
PRIMARY EXAMINER
GROUP 3300
3/27/2006